IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY

NOTICE OF MOTION NO.66 OF 2005
IN
INSOLVENCY NOTICE NO.N/256 OF 2004

Re:Hariprasad M. Agarwal..Judgment Debtor

Exparte: SICOM Ltd...Judgment Creditor

Mr. Kishore Jain i/b.G.R. Mehta for judgment creditor
Mr. G.B. Kedia, for judgment debtor.

CORAM: F.I. REBELLO, J.
DATE : 16th August, 2005

P.C.:

1. This is a motion by the judgment debtor to set aside the insolvency notice. The insolvency notice is based on a decree obtained by the judgment creditors against the judgment debtors. The principal contention as urged on behalf of the judgment debtors is that the judgment debtors do not reside and/or carry on their business within the ordinary civil jurisdiction of this Court. The judgment creditors have filed their reply and in para.10(ii) amongst others have set out that the judgment debtors were residents residing at 1203/B, Highland Park, Link Road, Extension, Andheri (West), Mumbai-400 058. The other averments regarding the judgment debtors carrying on business as Directors of the Company called Swaroop Steels Ltd., and also partners of the firms of M/s.S.S. Builders and M/s.Suraj Supply Co.,have been denied. There is however, no specific rejoinder in so far as residing at 1203/B, Island Park. The learned Counsel only states that those premises also have been sold and two agreements were entered into which have been registered. This is the main issue which has been argued before this Court. It is also contended that there is a counter claim.

2. In so far as the counter claim is concerned, that issue cannot be considered as that was an issue in Summons for Judgment which was taken out by the judgment creditors herein and was rejected.

3. In Ramavtar Kunjlal Gupta & Sanjay Ramavtar Gupa Exparte: SICOM Limited in Notice of Motion No.82 of 2004 in Notice No.N/24/2004 by judgment dated 23rd December, 2004 this Court noted a Division Bench judgment of this Court in Ramanlal Khanna v. Industrial Finance Corporation, in Appeal No.683 of 1993 in Notice of Motion No.23/1993 in N/1149/1992 decided on 17th September, 1993 that a view has been taken that the objection as to jurisdiction of the nature raised by the respondent No.1 herein would be under Section 11 can only be raised in a petition filed by the judgment creditor and that cannot be raised at this stage in answer to a notice. Considering the above the only objection need not be considered in this Motion. Motion stands dismissed with liberty to the judgment creditor to raise that contention on the petitioner filing a petition.

(F.I.REBELLO, J.)